

In re: DAVID FINCH, d/b/a WILD IOWA.
AWA Docket No. 02-0014.
Order Denying Petition for Reconsideration.
Filed December 16, 2002.

AWA – Petition for reconsideration – Late-filed petition for reconsideration.

The Judicial Officer denied Respondent's Petition for Reconsideration because it was not filed within 10 days after the date the Hearing Clerk served Respondent with the Decision and Order, as required by 7 C.F.R. § 1.146(a)(3).

Donald A. Tracy, for Complainant.

Respondent, Pro se.

Initial decision issued by James W. Hunt, Chief Administrative Law Judge.

Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

William R. DeHaven, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a "Complaint" on April 12, 2002. Complainant instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations and Standards]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges that: (1) on August 8 and 9, 2000, David Finch, d/b/a Wild Iowa [hereinafter Respondent], willfully violated section 10 of the Animal Welfare Act (7 U.S.C. § 2140) and sections 2.40 and 2.75(b)(1) of the Regulations (9 C.F.R. §§ 2.40, .75(b)(1)); and (2) on August 31, 1998, Respondent willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)) and sections 3.125(a), 3.127(c), 3.129(a), 3.130, and 3.131(a) and (c) of the Standards (9 C.F.R. §§ 3.125(a), .127(c), .129(a), .130, .131(a), (c)) (Compl. ¶ II).

The Hearing Clerk served Respondent with the Complaint, the Rules of Practice, and a service letter on April 19, 2002.¹ Respondent failed to answer the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). On May 20, 2002, the Hearing Clerk sent Respondent a letter informing him that his answer to the Complaint had not been received within

¹United States Postal Service Domestic Return Receipt for Article Number 7099 3400 0014 4584 7922.

the time required in the Rules of Practice.²

On July 1, 2002, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a “Motion for Adoption of Proposed Decision and Order” [hereinafter Motion for Default Decision] and a proposed “Decision and Order Upon Admission of Facts By Reason of Default” [hereinafter Proposed Default Decision]. The Hearing Clerk served Respondent with Complainant’s Motion for Default Decision, Complainant’s Proposed Default Decision, and a service letter on July 11, 2002.³ On August 6, 2002, Respondent filed an “Answer” in which he denied the allegations in paragraph II of the Complaint.

On August 9, 2002, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Chief Administrative Law Judge James W. Hunt [hereinafter the Chief ALJ] issued a “Decision and Order Upon Admission of Facts By Reason of Default” [hereinafter Initial Decision and Order]: (1) concluding that Respondent willfully violated the Animal Welfare Act and the Regulations and Standards as alleged in the Complaint; (2) directing Respondent to cease and desist from violating the Animal Welfare Act and the Regulations and Standards; (3) assessing Respondent a \$4,000 civil penalty; and (4) permanently disqualifying Respondent from obtaining an Animal Welfare Act license.

The Hearing Clerk served Respondent with the Initial Decision and Order on August 17, 2002.⁴ On September 17, 2002, Respondent appealed to the Judicial Officer. The Hearing Clerk served Complainant with Respondent’s appeal petition on September 19, 2002. Complainant failed to file a response to Respondent’s appeal petition within 20 days after service, as required by section 1.145(b) of the Rules of Practice (7 C.F.R. § 1.145(b)). On October 15, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. On October 23, 2002, I issued a Decision and Order in which I adopted the Chief ALJ’s Initial Decision and Order as the final Decision and Order. *In re David Finch*, 61 Agric. Dec. ____ (Oct. 23, 2002).

On October 28, 2002, the Hearing Clerk served Respondent with the Decision and Order.⁵ On November 13, 2002, Respondent filed “Petition for Reconsideration of AWA Docket No. 02-0014” [hereinafter Petition for Reconsideration]. The Hearing Clerk served Complainant with Respondent’s

²Letter dated May 20, 2002, from Joyce A. Dawson, Hearing Clerk, to Respondent.

³United States Postal Service Domestic Return Receipt for Article Number 7000 1670 0011 8982 8309.

⁴United States Postal Service Domestic Return Receipt for Article Number 7000 1670 0011 8982 8194.

⁵United States Postal Service Domestic Return Receipt for Article Number 7000 1670 0011 8982 7746.

Petition for Reconsideration on November 14, 2002. Complainant failed to file a reply to Respondent's Petition for Reconsideration within 20 days after service, as required by section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)). On December 11, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for reconsideration of the October 23, 2002, Decision and Order.

CONCLUSIONS BY THE JUDICIAL OFFICER ON RECONSIDERATION

Section 1.146(a)(3) of the Rules of Practice provides that a petition for reconsideration of the Judicial Officer's decision must be filed within 10 days after service of the decision, as follows:

§ 1.146 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of the decision of the Judicial Officer.

(a) *Petition requisite. . . .*

. . . .

(3) *Petition to rehear or reargue proceeding, or to reconsider the decision of the Judicial Officer.* A petition to rehear or reargue the proceeding or to reconsider the decision of the Judicial Officer shall be filed within 10 days after the date of service of such decision upon the party filing the petition. Every petition must state specifically the matters claimed to have been erroneously decided and alleged errors must be briefly stated.

7 C.F.R. § 1.146(a)(3).

Respondent's Petition for Reconsideration, which Respondent filed 15 days after the date the Hearing Clerk served the Decision and Order on Respondent, was filed too late, and, accordingly, Respondent's Petition for Reconsideration must be denied.⁶

⁶See *In re JSG Trading Corp.*, 61 Agric. Dec. 409 (2002) (Rulings as to JSG Trading Corp. Denying: (1) Motion to Vacate; (2) Motion to Reopen; (3) Motion for Stay; and (4) Request for Pardon or Lesser Sanction) (denying, as late-filed, a petition for reconsideration filed 2 years 2 months 26 days after the date the Hearing Clerk served the respondent with the decision and order on remand); *In re Jerry Goetz*, 61 Agric. Dec. 282 (2002) (Order Lifting Stay) (denying, as late-filed, a petition for reconsideration filed 4 years 2 months 4 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Beth Lutz*, 60 Agric. Dec. 68 (2001) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 2 months 2 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Mary Meyers*, 58 Agric. Dec. 861 (1999) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 2 years 5 months 20 days after the date the Hearing Clerk served the respondent with the decision and

For the foregoing reasons, the following Order should be issued.

ORDER

Respondent's Petition for Reconsideration is denied.

order); *In re Anna Mae Noell*, 58 Agric. Dec. 855 (1999) (Order Denying the Chimp Farm Inc.'s Motion to Vacate) (denying, as late-filed, a petition for reconsideration filed 6 months 11 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Paul W. Thomas*, 58 Agric. Dec. 875 (1999) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 19 days after the date the Hearing Clerk served the applicants with the decision and order); *In re Nkiambi Jean Lema*, 58 Agric. Dec. 302 (1999) (Order Denying Pet. for Recons. and Mot. to Transfer Venue) (denying, as late-filed, a petition for reconsideration filed 35 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Kevin Ackerman*, 58 Agric. Dec. 349 (1999) (Order Denying Pet. for Recons. as to Kevin Ackerman) (denying, as late-filed, a petition for reconsideration filed 17 days after the date the Hearing Clerk served the respondent with the order denying late appeal as to Kevin Ackerman); *In re Marilyn Shepherd*, 57 Agric. Dec. 1280 (1998) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 11 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Jack Stepp*, 57 Agric. Dec. 323 (1998) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 16 days after the date the Hearing Clerk served the respondents with the decision and order); *In re Billy Jacobs, Sr.*, 55 Agric. Dec. 1057 (1996) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 13 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Jim Fobber*, 55 Agric. Dec. 74 (1996) (Order Denying Respondent Jim Fobber's Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 12 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Robert L. Heywood*, 53 Agric. Dec. 541 (1994) (Order Dismissing Pet. for Recons.) (dismissing, as late-filed, a petition for reconsideration filed approximately 2 months after the date the Hearing Clerk served the respondent with the decision and order); *In re Christian King*, 52 Agric. Dec. 1348 (1993) (Order Denying Pet. for Recons.) (dismissing, as late-filed, a petition for reconsideration, since it was not filed within 10 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Charles Crook Wholesale Produce & Grocery Co.*, 48 Agric. Dec. 1123 (1989) (Order Dismissing Untimely Pet. for Recons.) (dismissing, as late-filed, a petition for reconsideration filed more than 4 months after the date the Hearing Clerk served the respondent with the decision and order); *In re Toscony Provision Co.*, 45 Agric. Dec. 583 (1986) (Order Denying Pet. for Recons. and Extension of Time) (dismissing a petition for reconsideration because it was not filed within 10 days after the date the Hearing Clerk served the respondent with the decision and order); *In re Charles Brink*, 41 Agric. Dec. 2147 (1982) (Order Denying Pet. for Recons.) (denying, as late-filed, a petition for reconsideration filed 17 days after the date the Hearing Clerk served the respondent with the decision and order).